

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CINDY MOONSAMMY, *et al.*,

Plaintiffs,

-v-

DAVID C. BANKS, *et al.*,

Defendants.

24 Civ. 2616 (PAE)

ORDER


PAUL A. ENGELMAYER, District Judge:

The Court is in receipt of a letter from defendants the New York City Department of Education and its Chancellor (the “Department”), Dkt. 40, notifying it of the parties’ “disagreement” regarding the proper recipients of the pendency payments to be made by defendants, *see* Dkts. 24 (“Pendency Order”), 41. As an initial matter, the Court observes that its Pendency Order requires that pendency payments “be processed in the usual course” by the Department. Dkt. 24 at 15 (citing *Mendez v. Banks*, 65 F.4th 56, 63 (2d Cir. 2023)). The Department represents that plaintiffs deny that it may “reimburse” them for pendency costs for the 2023–2024 and 2024–2025 school years, with plaintiffs instead taking the view that the Department must “directly pay” those costs to their child’s educational and related service providers, International Institute for the Brain (“iBrain”) and Sisters Travel and Transportation Services, LLC (“Sisters”). *See* Dkt. 40 at 1.

In the interest of promptly litigating and resolving this dispute, the Court directs plaintiffs to file a letter on the docket, by Friday, August 30, 2024, addressing, in addition to any other relevant considerations, (1) whether direct payment of the pendency costs would be consistent with the Department’s “ordinary payment procedures”; (2) what provision of the Individuals

with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.*, New York State Education Law, N.Y. Educ. Law §§ 4401 *et seq.*, and/or any regulation promulgated thereunder entitles plaintiffs to direct payment of pendency costs; (3) whether reimbursement of the pendency costs, rather than direct payment, would threaten their child's placement for the 2024–2025 school year; (4) the amount of their child's pendency costs due iBrain and Sisters for the 2023–2024 and 2024–2025 school years; and (5) whether any of the pendency costs for the 2024–2025 school year have actually accrued. *See Mendez*, 65 F.4th at 59, 60–64. Any response from the Department is due Friday, September 6, 2024.

SO ORDERED.


PAUL A. ENGELMAYER
United States District Judge

Dated: August 23, 2024
New York, New York